

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM ANGELO LATTEN, JR.,

Plaintiff,

v.

J. BENAVIDEZ, et al.,

Defendants.

No. 2:23-cv-1879 DAD SCR P

ORDER

Plaintiff is a state prisoner proceeding pro se in an action brought under 42 U.S.C. § 1983. Plaintiff requests that the court appoint counsel. ECF No. 29. District courts lack authority under 28 U.S.C. § 1915 to require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). The test for exceptional circumstances requires the court to evaluate the plaintiff's likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not establish exceptional circumstances that would warrant a request for the voluntary assistance of counsel. Wood, 900 F.2d at 1335; Riley v. Franke, 340 F. Supp. 3d 783,

1 787 (E.D. Wis. 2018). Having considered all these factors, the court finds that plaintiff has failed
2 to meet his burden of demonstrating exceptional circumstances warranting the appointment of
3 counsel at this time.

4 Plaintiff's request for appointment of counsel is submitted on a state court form that
5 checks boxes indicating plaintiff is applying for "conservatorship" and is requesting appointment
6 of counsel under the California Probate Code for "petitioner" who is "alleged to lack capacity."
7 The undersigned recognizes that appointed counsel may be required in a civil proceeding as an
8 accommodation for a litigant who is disabled. See Franco-Gonzalez v. Holder, No. 10-cv-02211
9 DMG (DTBx), 2013 WL 3674492, at *3-*9 (C.D. Cal. Apr. 23, 2013) (granting summary
10 judgment to class of mentally disabled individuals in civil immigration proceedings on their
11 request for appointed representatives under the Rehabilitation Act). Due process may also require
12 appointment of counsel in certain proceedings. See Turner v. Rogers, 564 U.S. 431, 444-45
13 (2011) (analyzing request for appointment of counsel in civil proceeding under the Mathews v.
14 Eldridge, 424 U.S. 319 (1976), procedural due process framework). However, plaintiff does not
15 include any contextual information about his request for appointment of counsel, such as mental
16 health record or other records relevant to his use of the state court form. Plaintiff may renew his
17 request for appointment of counsel after the stay of this case is lifted by submitting additional
18 information relevant to his legal capacity.

19 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of
20 counsel (ECF No. 29) is denied without prejudice to renewal after the stay of this case is lifted.

21 DATED: February 4, 2025

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25 SEAN C. RIORDAN
26 UNITED STATES MAGISTRATE JUDGE
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